



WHAT WOULD LINCOLN,



The OCBA Professionalism & Ethics Committee: Pictured, from left to right: Wayne Gross, David Stein, Kate Corrigan, Scott Garner, Elizabeth Pejeau, Ed Welbourn, and John Hueston. Not in the picture but on the committee: Jeremy Miller and Nicole Varner.

by John Hueston and Wayne Gross

ESQ., DO?

"I do not care to speak ill of any man," joked Samuel Johnson, "but I have heard that he is an attorney." As attorneys, we must be ever cognizant of the fact that the public is inclined to believe the worst about our professionalism and ethics, and perhaps for good reason. Movies and television often portray lawyers as overly aggressive egomaniacs who put their ambitions before the interests of clients and society. At least with respect to some attorneys,

this portrayal may not be too far from the truth. Almost any judge who presides over trials will likely find it quite easy to cite several examples of ethical lapses and incivility by attorneys in the courtroom. And judges, of course, see only a small portion of attorneys' work; the vast majority of such work—depositions, interrogatories, etc.—is generally performed outside of the watchful eye of a judicial officer.

The mission of the Professionalism and Ethics Committee is to support and encourage Orange County Bar members to engage in the professional and ethical practice of law. We primarily carry out this mission by issuing non-binding opinions on specific issues pertaining to professionalism and ethics that are submitted to the State Bar of California and the *Orange County Lawyer* magazine for publication. Last year, for example, we issued opinions on client perjury and attorney-client sexual relations. This year, we have decided to go beyond merely addressing specific ethics issues. In consultation with federal and state judges and the Board of the Orange County Bar Association, we have prepared general guidelines for litigators, referred to as the "Standards for Professionalism and

Civility Among Attorneys" ("the Standards"). (The Committee acknowledges the many good ideas and policy statements it reviewed from sister bar organizations and courts, including, most significantly, the Los Angeles County Bar Association's "Litigation Guidelines.")

The Standards counsel that it is not an acceptable tactical ploy to fail to return phone calls, file needless interrogatories or make oppressive document demands. The Standards likewise reflect that refusal to accommodate opposing counsel is far from a sign of strength, but rather likely to redound to the detriment of the attorney perpetrator and, ultimately, to his or her client. When we as lawyers are touched "by the better angels of our nature," we are not sacrificing our clients' interests, but rather advancing them. (See B. Thomas, *Abraham Lincoln* 248 (1952) (quoting from the closing sentence of Lincoln's first inaugural address).)

The Standards are not intended to replace or limit an attorney's obligations under the Rules of Professional Conduct or any other legal regime. Nor are they to be used as criteria for imposing liability, sanctions, or disciplinary measures of any kind. Although the Board of the

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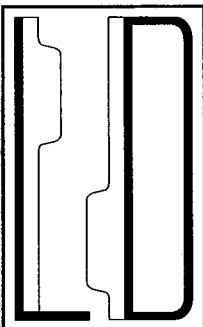


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Orange County Bar Association voted unanimously to approve them, and all members of the Orange County Bar will receive a copy, the Standards will have no practical effect unless they are embraced by all members of what is now the second largest voluntary bar in this state and the eighth largest in the country.

In seeking wide-spread voluntary adoption of our standards, we need look no further than Abraham Lincoln. All of us know about his rising from obscurity to lead the nation through its greatest trial by his nobility of character, moral courage, and genius for politics and language. Few of us, however, probably recall that in between the log cabin and White House, the self-taught Lincoln practiced law in Springfield, Illinois, where he was one of the best and most successful lawyers of his time, noted not only for his uncanny skill at presenting complicated issues simply and persuasively, but also for being both fair and honest. He was also prolific, arguing 243 cases in the Illinois Supreme Court. But his powers were most impressive before juries, who, not surprisingly, frequently returned verdicts quite favorable to his clients.

Lawyers sometimes complain that strict adherence to prescriptions for civility will redound to their strategic detriment. However, Abraham Lincoln forcefully demonstrated that collegiality and even concessions of error not only increased his standing before the bar and juries, but conferred strategic advantages. One of the persons against whom he tried many cases described the advantages gained through a disarming collegial style:

"As he entered the trial," relates one of his colleagues at the bar, "where most lawyers would object, he would say he 'reckoned' it would be fair to let this in, or that; and sometimes when his adversary could not quite prove what Lincoln knew to be the truth, he 'reckoned' it would be fair to admit the truth to be so-and-so. When he did object to the Court, and when he heard his objections answered, he would often say, 'Well, I reckon I must be wrong.' Now, about the time he had practiced this three-fourths through the case, if his adversary didn't understand him, he would wake up in a few minutes learning that he had feared the Greeks too late and find himself beaten. He was wise as a serpent in the trial of

a cause, but I have had too many scars from his blows to certify that he was harmless as a dove. When the whole thing unraveled, the adversary would begin to see that what he was so blandly giving away was simply what he couldn't get and keep. By giving away six points and carrying the seventh, he traded away everything which would give him the least aid in carrying that." (H. Stern, *Trying Cases to Win: Voir Dire & Opening Argument* 15 (1991) (quoting W. Herndon, *Life of Lincoln* 269, 270 (1930)).)

Although his legacy as president was marked by strength and perseverance, it was likewise defined by his sense of grace and conciliatory nature. After his re-election in 1864, as he looked upon a South decimated by the Civil War, he faced the question of whether the national government should be harsh or forgiving. His approach to the South, as reflected in his second inaugural address, was ultimately conciliatory: "With malice toward none, with charity for all . . . let us strive on to finish the work we are in, to bind up the nation's wounds . . . to do all which may

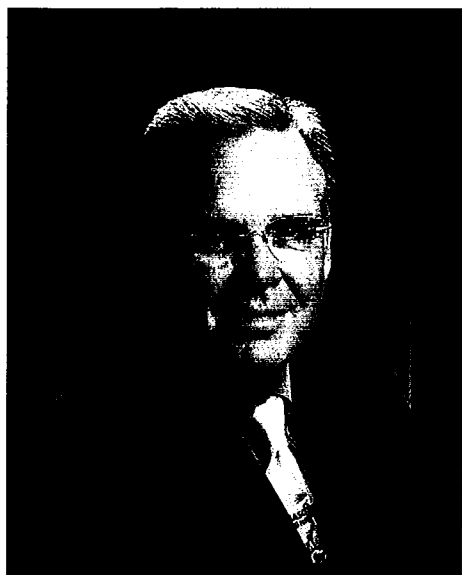
achieve a just and lasting peace among ourselves and with all nations." In the end, our country was saved by a president who understood, from the time that he was a lawyer, that no matter how important the fight and how wrong the foe, one must temper zealous advocacy with humanity and civility.

The legal profession is a noble pursuit that once commanded the respect of all citizens. Recently, the profession's reputation has suffered in the eyes of many. As a modest first step to reverse this trend, we on the Professionalism and Ethics Committee have

created the following standards, which we believe are consistent with the manner in which Lincoln would conduct himself as a lawyer.



John Hueston is currently serving as a special prosecutor with the Enron Task Force. Wayne Gross is Chief of the Orange County branch of the U.S. Attorney's office. They serve as Co-chairs of the Professionalism & Ethics Committee.



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Congratulations Hon. C. Robert Jameson on 20 years of distinguished service on the Orange County Superior Court. We are honored to welcome you to our eminent panel of jurists.



On January 31, 2005, after 20 years of service, Hon. C. Robert Jameson retired from the Orange County Superior Court, where he was the Supervising Judge of the Complex Civil Litigation Panel. Prior to that assignment, he was the Presiding Judge of the Superior Court for two years and Presiding Judge of the Appellate Division for several years. Over a 10-year span, he also actively tried and settled many hundreds of matters on the Civil Panel in various departments in the Santa Ana court house.

Judge Jameson brings his extensive judicial experience -- which includes the handling of many high profile matters and his reputation as one of Orange County's most respected Judges -- to the private sector, where he will specialize in resolving complex commercial disputes, medical malpractice, product liability and other serious tort matters. Known for his *call it as he sees it approach*, consistency, great work ethic and dedication to the legal community, Judge Jameson has garnered recognition from numerous organizations, including Judge of the Year Awards by ABOTA, Consumer Attorney of California, OCBA Business Litigation section, and many other sections of the bar. Those who know him as a judge, former civil litigator or college football player, say his intense competitive spirit drives him to work exceptionally hard to settle even the most challenging matters.

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